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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2006

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

and

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.66 of 2002

Tvl. The Savamalai Estates Ltd.,
No.3, Simon Layout,
Annamalai Chettiar Road,
Coimbatore-641 011. ...Applicant/Petitioner

-Vs.-

The State of Tamil Nadu,
rep. by Agricultural Income Tax Officer,
Pollachi. ... Respondent/Respondent

Revision under Section 54 of the Tamil Nadu Agricultural Income Tax Act, 1955 to revise the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras dated 08.01.2002 passed in A.T.A. No.18 of 2001 against the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Chennai-104 dated 26.7.2001 against the order of the District Revenue Officer/Assistant Commissioner (Agricultural Income Tax) Coimbatore dated 19.6.2001 in AP.26/2001/D against the order of the Agricultural Income Tax Officer, Pollachi dated 13.3.2001 GIR.2S/2000-2001/Pollachi.

For Petitioner : Mr.T.Ravikumar

For Respondent : Mr.Haja Naziruddin,
Spl.Govt.Pleader (Taxes)

O R D E R

(Order of the Court was made by
P.P.S. Janarthana Raja, J)

This revision is filed under Section 54 of the Tamil Nadu Agricultural Income Tax Act, 1955 to revise the order of the Tamil

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Nadu Agricultural Income Tax Appellate Tribunal (hereinafter referred to as "Appellate Tribunal), Madras dated 08.01.2002 passed in A.T.A. No.18 of 2001, raising the following substantial questions of law:

(a) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in holding that disallowance could be restricted to 20% of the expenditure incurred for use of all vehicles for private purposes due to non maintenance of log books?

(b) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in holding that disallowance could be restricted to 20% on probable private use of the vehicles inspite of the fact that the trip sheets produced do not indicate the use of vehicles for private purposes.

(c) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in restricting the disallowance of 20% inspite of the fact that the trip sheets maintained by the assessee clearly indicate the movement of the vehicles from place to place with date time and purpose of visit, which would prove that the vehicles were used for agricultural purposes only?

(d) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in not considering the fact that lorries were used within the Estate for transporting coffee cherry and there cannot be private use of any such vehicle and further in respect of jeeps in the Estate, the same were provided to the Estate Manager exclusively for his use and hence there cannot be any personal use by the company warranting disallowance of expenditure?

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(e) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in not considering the fact that there cannot be any personal use of vehicles by a company as it is not a living person registered under the Companies Act having perpetual entity?

(f) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law that the order passed by the Asst. Commissioner, Coimbatore was based on a report by the AITO vide letter dated 5.8.2001, copy of which was not furnished to the Applicants herein, which is against the principles of natural justice and restricting the disallowance to 20% of the total expenditure for use of vehicles for private purposes?

(g) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in restricting disallowance to 20% as in the original assessment completed by the AITO, Pollachi, a total agricultural income of Rs.8,53,432/- has been determined, after making a disallowance of expenditure of Rs.5,85,662/- which includes Rs.1,65,964/- in respect of expenditure on maintenance of vehicles?

(h) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in holding that there was necessity for the usage of lorries for private purposes when the Directors have their own cars?

(i) Whether on the facts and in the circumstances of the case, the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras was right in law in holding that the earlie order passed by them covered the present case while so it related only to restriction of expenditure in respect of motorcycle and not in relation to any other vehicles in the estate?"

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2. The brief facts leading to the above revision, are as follows:

The assessee is a Public Limited Company holding 665.14 acres of land. They are engaged in growing coffee crop of Arabica and Robusta varieties. The relevant assessment year is 2000-01. The assessee company has filed income and expenditure showing agricultural income at Rs.2,87,770/-. The Assessing Officer arrived at the taxable income at Rs.8,53,432/- and demanded a tax of Rs.2,03,059/- after adjusting the advance tax already paid. While completing the assessment, the Assessing Officer disallowed the amount of Rs.5,85,662.45 under various heads of expenses. Aggrieved by the order, the assessee filed an appeal to the Assistant Commissioner (Agricultural Income Tax), Coimbatore. The said Assistant Commissioner (AIT), confirmed the assessment and dismissed the appeal. Against the order of the said Assistant Commissioner (AIT), the assessee filed an appeal to the Appellate Tribunal. The Appellate Tribunal restricted the disallowance to 20% as against 25% by the lower authorities in respect of maintenance of vehicles and partly allowed the appeal.

3. The counsel appearing for the assessee submitted that the Appellate Tribunal was wrong in restricting the disallowance to 20% on probable private use of vehicles inspite of the fact that the trip sheets do not indicate the use of vehicles for private purposes.

4. The learned Special Govt. Pleader (Taxes) appearing for the State submitted that the Appellate Tribunal had considered all the relevant materials and restricted the disallowance to 20% in respect of maintenance of vehicles. Hence the finding of the Appellate Tribunal was based on evidence and there is no question of law involved for consideration of this Court.

5. We heard the counsel. The Appellate Tribunal in Para 17 of the impugned order, held as follows:

> "17. The expenditure on the maintenance of vehicles was claimed for lorry, Tata truck, Mahindra Jeep and Willy's Jeep. The apellants were maintaining trip sheets. However, log book was not maintained. They submit that there was no personal use of the vehicles by the Directors who have their own cars. Considering similar matter in the case of the appellants in A.T.A. No.40/98 dated 13.4.98, we have held that the disallowance for possible personal use could reasonably be restricted to 20% as against 25%.

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In this case also, as the appellants are maintaining trip sheets for non-maintenance of log books, disallowance can be restricted to 20%."

6. The Appellate Tribunal merely followed the earlier order of the assessee's own case relating to the assessment year 1997-98 in Appeal No.9/98 dated 10.10.1998 and had restricted the disallowance to 20%. The earlier Appellate Tribunal order forms part of the typed set and we have gone through the order. In the said earlier Appellate Tribunal's order, the Appellate Tribunal remanded the matter to the Assessing Officer with a direction to verify the details of expenditure and allow the claim in accordance with law. In pursuance of the remand order of the Appellate Tribunal, the Assessing Officer passed a consequential order vide Ref: G.I.R. No.23/97-98 dated 21.09.1999 and allowed the claim of expenditure relating to maintenance of motor vehicles.

7. In view of the above, we set aside the impugned order with a direction to the Assessing Officer to consider the issue after giving opportunity to the assessee and pass orders in accordance with law. Accordingly, the tax case is disposed of. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Agricultural Income Tax Officer,
Government of Tamil Nadu,Pollachi.

2. The Tamil Nadu Agricultural Income Tax Appellate Tribunal,
Chennai-104

3. The District Officer/Assistant Commissioner,
(Agricultural Income Tax) Coimbatore.

4. The Secretary,
Central Board at Direct Taxes, New Delhi.
1 cc to Special Government Pleader (Taxes)SR.25867
tej (co)

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